IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Sheochand & Ors. Vs. State of Raj. & Anr.
S.B. CR. REVISION PETITION NO.1036/2005

Against order dated 12.09.2006 passed by learned Judicial Magistrate No.2, Sri Ganganagar in Criminal Case No.989/2001 – State Vs. Sheo Chand & Ors.

DATE OF ORDER :: Sept. 11 , 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. N.L. Joshi for petitioners.

BY THE COURT:

This petition has been filed challenging order dated 12.09.2006 passed by learned Judicial Magistrate No.2, Sri Ganganagar in Criminal Case No.989/2001 – State Vs. Sheo Chand & Ors., whereby the learned Magistrate has framed charge under Sec. 420 IPC against the petitioners.

The facts necessary for the disposal of present petition are that complainant Smt. Indira Devi filed a complaint against petitioners in the Court of Addl. Chief

Judicial Magistrate No.2, Sri Ganganagar, stating inter-alia that Subhash Goyal, a person known to her husband, in April 1996 came to village with his brother Purshottam, who opened a shop in the village and asked for making deposits with him giving assurance that she would get more interest than bank rate and accordingly she deposited in total Rs.5 lacs with him. In the complaint she also stated that the present petitioners, who were having transactions with said Purshottam and had to pay Rs.4.80 lacs to Purshottam and were also in need of some more amount to make bank payment so in order to meet their requirement they proposed to sell their land measuring 5 bighas to her @ Rs.1,15,000/- per bigha. She paid Rs.60,000/- as an advance for the transaction of purchasing land, however, later on the petitioners refused to execute the sale deed and when she contacted Purshottam Goyal and demanded her amount deposited with him, he too refused rather stated that her deposit with him was adjusted towards the dues of the petitioners who are her relatives. It was alleged that the efforts made in Panchayat to resolve the dispute failed and the petitioners clearly accepted cheating on their part and in this way dishonestly cheated her inducing her to

deliver the property.

The complaint was forwarded to Police Station, Hindumalkot under Sec.156(3) Cr.P.C., where CR No.93 was registered on 05.05.2001 against the petitioners for the offence under Sec.406 and 420 IPC and the police after investigation chargesheeted the accused petitioners for offence under Sec.420 IPC. Thereafter, on 12.09.2005 the trial Court framed charge against them under the said section of Indian Penal Code. Against that order of framing charge, the petitioners have approached this Court by way of filing the present revision petition under Sec.397 read with Sec.401 Cr.P.C.

The contention of the learned counsel is that the present matter is of civil nature as per the allegations of the present case, therefore, cognizance taken by the learned trial Court under Sec.420 IPC against the petitioners is not legally tenable and the order passed by the learned trial Court framing charge is required to be set aside. It has next been contended that if an agreement is executed between the parties and subsequently that agreement is not

fulfilled then that cannot be a reason for framing a charge under Sec.420 IPC because what is necessary for framing charge is that there should be intention at the time of writing an agreement. According to the learned counsel, in the instant case, this part is completely missing and the story putforth by the complainant is also not believable. Learned counsel in support of his submissions has placed reliance on 1998 Cr.L.R.(SC) 670 (Nageshwar Prasad Singh @ Sinha Vs. Narayan Singh & Anr., 2003(3) Supreme 13 (Hardaya Ranjan Pd. Verma & Ors. Vs. State of Bihar & Anr.), AIR 2001 SC 1226 (Alpic Finance Ltd. Vs. P. Sadasivan & Anr.), 2001 (8) Supreme 216 (S.W. Palanitkar & Ors. Vs. State of Bihar & Ors.) 2006 AIR SCW 2543 (Ram Biraji Devi & Anr. Vs. Umesh Kumar Singh & Anr.) and 2004 WLC (Raj) UC 494 Chandra Kalla Vs. State of Rajasthan.

I have considered the submissions made before me and carefully perused the above cited cases by the leaned counsel.

In the authorities cited by learned counsel, the principles which have been laid down by the Hon'ble Apex

Court and High Courts are to the effect that for the purposes of Sec.420 IPC the intention of the person should be gathered from the very beginning. In the authorities, it has also been laid down that even if a contract is entered between the parties and subsequently part of the contract is not fulfilled or promise is not maintained then that cannot be a case of cheating but the same will be of civil nature.

Keeping in mind the above principles laid down by the Hon'ble Apex Court, now I propose to examine the present case.

In the present case, the allegations made in the complaint indicate that the complainant, who is a lady, has been given false assurance and from very beginning she was cheated inasmuch as Purshottam Goyal, who was introduced by his brother Subhash Goyal, a friend of complainant's husband, persuaded the complainant to deposit some money with him and also assured that high rate of interest will be paid to her. On the above assurance, it is stated in the complaint that she deposited a sum of Rs.5 lacs with him. It is also alleged in the complaint that

the petitioners, who were in business transactions with Purshottam and were to pay back a sum of Rs.4.80 lacs to him, needed some more money to pay the debts of the bank and told her that they would be selling their land measuring about 5 bighas at the rate of Rs.1,15,000 per bigha, therefore, she believed on the words of the petitioners and gave as advance a sum of Rs.60,000 but subsequently the petitioners did not keep their words and also refused to return the amount.

In the above circumstances, prima facie, it cannot be said that allegations of cheating are not there and prima facie a charge was not required to be framed under Sec.420 IPC against the petitioners. A perusal of the impugned order passed by the learned trial Court also clearly indicates that that on false assurance a sum of Rs.60,000 was obtained, therefore, in the circumstances of the case, as have been stated in the complaint, prima facie, accused were liable to face trial under Sec.420 of the IPC and therefore, the trial Court passed the order impugned regarding framing of charge on 02.08.2005 and the charge was accordingly framed.

It cannot be said that in every case where a contract orally or reduced in writing is not acted upon then no case under Sec.420 IPC is not made out and all the cases are of civil nature. In my considered opinion, when on the basis of facts of a particular case, prima facie, dishonest intention appears from the very beginning then the Court is competent to passed an order to frame charge. In the instant case, the trial Court has considered the matter in right perspective while passing the order, therefore, I do not feel inclined to take a different view than the one taken by the learned trial Court and to me there appears no merit in this revision and the same deserves to be dismissed.

Accordingly, the revision petition is dismissed summarily.

(SATYA PRAKASH PATHAK)J.

/jpa